

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 5, 2001

D034034 People v. Anderson

The judgment is affirmed. Kremer, P.J.; We Concur: Nares, J., Haller, J.

D034347 Berlin et al. v. Lawyers Title Insurance Corporation et al.

The order sustaining without leave to amend LTIC's demurrer to the Berlins' second cause of action is affirmed. The order granting judgment on the pleadings in favor of all defendants against the Berlins on their seventh cause of action is affirmed. The orders granting summary adjudication in favor of LTIC and against the Berlins on their fourth, eighth and ninth causes of action against LTIC are affirmed. The order denying the Berlins' motion for class certification is affirmed. The order denying the Berlins' motion for sanctions against LTIC's attorneys is affirmed. In all other respects, the judgments in favor of LTIC and the third party defendants are reversed, and the matter is remanded for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

D036419 Espressions at Rancho Niguel Association v. Monier, Inc.

The judgment is reversed and the matter is remanded for further proceedings not inconsistent with this opinion. Monier is to recover its costs of appeal. CERTIFIED FOR PUBLICATION. McIntyre, J.; We Concur: Huffman, Acting P.J., Nares, J.

D035920 Argentum Air Corporation v. Guerriero et al.

The judgment and order are affirmed. Argentum is to recover its costs of appeal. McIntyre, J.; We Concur: Huffman, Acting P.J., Nares, J.

D036518 Cowan v. Auto Relocation Plus, Inc.

The award of attorney fees and costs is reduced to \$15,516.29. In all other respects, the order is affirmed. Cowan to recover costs on appeal. McIntyre, J.; We Concur: Kremer, P.J., McDonald, J.

D036396 In re Anderson on Habeas Corpus

The petition is denied.

D035798 People v. Lopez

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D036633 Tamye E. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is granted. The court is directed to vacate its October 16, 2000 order and to enter a new order returning Krystal to Tamye's physical custody. This opinion is final immediately as to this court. (Cal. Rules of Court, rule 24(d).) McIntyre, J.; We Concur: Kremer P.J., Benke, J.

D036596 In re Handy on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 5, 2001 (Continued)

D037090 In re Handy on Habeas Corpus

The petition is denied.

D036392 Zamos v. Superior Court of San Diego County/Zamos

The petition and motion are denied.

D036971 Scripps Mercy Hospital v. Superior Court of San Diego County/Burns

The petition is denied.

D037297 Garcia v. Superior Court of Imperial County/People

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 6, 2001

D036026 In re Hamilton on Habeas Corpus

The petition is denied.

D036551 People v. Jones

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D037282 San Pasqual Union School District v. Superior Court of San Diego County/Proud

The petition is denied.

D035996 Barsky et al. v. Kuebler et al.

Counsel for deceased appellant having failed to file a substitution of parties under California Rules of Court, rule 48(a), the appeal is dismissed as a non-operative appeal.

D036350 In re Joseph V., a Juvenile

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D036498 People v. Bodiford

On the court's own motion, a rehearing is granted in this matter based upon the California Supreme Court's decision in *People v. Cromer* (Jan. 22, 2001, S076444) ___ Cal.4th ___ (01 D.A.R. 741). The case will be submitted upon completion of additional briefing.

D037112 Baddour v. Baddour

D037118 Baddour v. Baddour

D037110 Baddour v. Baddour

On the court's own motion the above-entitled appeals are consolidated. All future filings will be under case number D037112.

D036402 In re Isaiah C., a Juvenile

The orders denying the section 388 modification petition and terminating parental rights are reversed. The matter is remanded to the juvenile court with directions to conduct an evidentiary hearing on the petition. If Kimberly does not prevail on her petition, the court must conduct a new selection and implementation hearing. Kremer, P.J.; We Concur: Benke, J., Huffman, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 7, 2001

D034967 Linda Araiza-Klier v. Teachers Insurance and Annuity Association, et al.

In reviewing the briefs and record in this matter, the court has discovered issues which require additional briefing. Accordingly the court directs appellant to answer, within 20 days of the date of this order, by way of a letter brief not exceeding 20 pages, the following questions: 1. In light of the preemption holdings in *California Div. of Labor Standards Enforcement v. Dillingham Constr. N.A., Inc.* (1997) 519 U.S. 316, 324; *Bankamerica Pension Plan v. McMath* (9th Cir. 2000) 206 F.3d 821, 828-830; and *Emard v. Hughes Aircraft Co.* (9th Cir. 1998) 153 F.3d 949, 954, are the rights of the parties to the death benefits provided by the annuity contract governed directly by California law rather than by the federal common law? 2. Under California law, did appellant waive her right to the death benefits? (See *Life Insurance Co. v. North America v. Cassidy* (1984) 35 Cal.3d 599, 605; *Snyder v. Snyder* (1987) 197 Cal.App.3d 6, 9-11.) Respondents may, within 20 days after service of appellant's brief, file a responsive brief not exceeding 20 pages. The order setting this case for argument in February is vacated and the matter will be set on the May calendar. Benke, APJ

D037308 People v. Cespedes

The notice of appeal filed January 24, 2001 is dismissed.

D035488 AccuCom Wireless Services, Inc. v. Cubic Communications, Inc.

The judgment is affirmed. AccuCom shall recover its costs on appeal. O'Rourke, J.;
We Concur: Benke, Acting P.J., McDonald, J.

D035497 People v. Salazar

The judgment is affirmed. McDonald, J.; We Concur: Kremer, P.J., Benke, J.

D033818 Henderson et al. v. Sharp Rees-Stealy Medical Center

The judgment is affirmed. The parties shall bear their own costs on appeal. Nares, Acting P.J.;
We Concur: McIntyre, J., O'Rourke, J.

D036356 Manduley et al. v. Superior Court of San Diego County/People

D036456 Rose et al. v. Superior Court of San Diego County/People

The pending petition for writ of prohibition, *Rose v. Superior Court*, D036456, is consolidated with the petition for writ of prohibition, *Manduley v. Superior Court*, D036356, for disposition.

D036356 Manduley et al. v. Superior Court of San Diego County/People

D036456 Rose et al. v. Superior Court of San Diego County/People

Let a peremptory writ of mandate issue directing the superior court to vacate its September 12, 2000, order overruling Petitioners' demurrers and to enter a new order sustaining the demurrers. Petitioners shall recover costs in this writ proceeding. CERTIFIED FOR PUBLICATION. McDonald, J.;
I Concur: Huffman, Acting P.J., Dissenting Opinion: Nares, J.

D035820 Fox v. Dorf et al.

The judgment is affirmed. Each party shall bear its own costs on appeal. Huffman, Acting P.J.;
We Concur: McIntyre, J., O'Rourke, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 7, 2001 (continued)

D036744 City of San Diego v. Workers' Compensation Appeals Board and Molnar

Let a writ of review issue ordering the Workers' Compensation Appeals Board (the Board) to certify and return to this court any materials which were before the Board in making the decision in the matter of Molinar v. City of San Diego, SDO 248719, which are not contained in the petition for writ of review currently before this court. These materials should be received by this court on or before March 12, 2001. Leave is granted to the Board to appear in these proceedings and to file a response no later than April 12, 2001. The documents currently on file shall constitute a return to the writ subject to any party filing a supplemental written return on or before April 25, 2001. Unless the parties object by April 25, 2001, oral argument will be deemed waived.

D031288 People v. Thomas et al.

Appellant Michael E. Maas's petition for rehearing is denied.

D037258 In re Maas on Habeas Corpus

The petition is dismissed as moot in light of our January 16, 2001 order.

D036692 Crowley v. The "Neighbors", a California Partnership, et al.

Respondent's unopposed motion to dismiss the appeal is granted. The appeal is dismissed.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 8, 2001

D036514 People v. Cisneros et al.,

The judgments are affirmed. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D035612 People v. Yarrow

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D034206 Bame v. City of Del Mar

D034354 City of Del Mar v. 22nd District Agricultural Association

The judgment in superior court case No. N79707 is reversed and the case remanded with directions to enter a new judgment declaring section 3.08.010 of the ordinance invalid as applied to entities that contract with the District to operate consumer exhibitions and demonstrations encompassed within the District's functions. The judgment of dismissal in superior court case No. N80584 is reversed and the superior court directed to vacate the judgment and order sustaining the City's demurrer without leave to amend and enter a new order overruling the City's demurrer as to Bame's second cause of action. The District and Bame shall recover their costs on appeal. CERTIFIED FOR PUBLICATION. O'Rourke, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D034592 People v. Morris

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

February 9, 2001

D037207 In re Hamilton on Habeas Corpus

The petition is denied as moot.

D035613 People v. Beerbower

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is DISMISSED and the remittitur is ordered immediately (Cal. Rules of Court, rule 38).

D035313 Johnson v. Tenenhaus et al.,

The judgment is affirmed. Respondents are entitled to costs on appeal. McDonald, J.;
We Concur: Kremer, P.J., Haller, J.

D036554 In the Matter of the Conservatorship of Pamela Caldwell

The judgment insofar as it concerns disabilities and placement is reversed and the matter is remanded to the superior court for a new hearing solely on the questions of disabilities and placement. As to the conservatorship, the judgment is affirmed. The remittitur is to issue immediately. Each party is to bear its own costs.

D036504 People v. Pham et al.,

The superior court is directed to amend Pham's abstract of judgment to reflect Pham is entitled to 714 days of custody credits and to forward the corrected abstract of judgment to the Department of Corrections. In all other respects the judgments are affirmed. Work, Acting P.J.;
We Concur: Benke, J., O'Rourke, J.

D035517 People v. Araiza

The judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D036867 Cury v. Isuzu Motors America, Inc. et al.

Judgments affirmed. Cury to bear costs on appeal. Haller, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D037071 Shea Homes Limited Partnership et al. v. Superior Court of San Diego
County/Alward et al.**

The petition is denied.

**D037342 Shea Homes Limited Partnership et al. v. Superior Court of San Diego
County/Alward et al.**

The petition is denied.

D037313 Retone v. Superior Court of San Diego County/Lazarus

The petition is denied.